

## A CHANGE OF HEART.

"Who is To Be Benefited" the Question.

The proposition of raising the waters of Lake Tahoe two feet for the benefit of the new irrigation system of Nevada has developed some remarkable changes of heart.

First the Reno Journal and the people of Reno are vociferous in praise of the new project. There is every reason why they should be but one has but to go back a few years to note that these same people were busy fighting a scheme of Senator Boyle who was endeavoring to get a franchise from the legislature to tunnel Lake Tahoe and inaugurate a system of irrigation and electric power in which an eastern company were willing to invest seven millions of dollars.

The entire county of Washoe was up in arms and fighting the project tooth and nail, because they figured out that it would be more benefit to Carson and vicinity than to Reno and vicinity.

This policy has always anamated Reno. It figures that nothing in the shape of a public enterprise must be pushed that does not benefit Reno. It cares little for the rest of the State.

It was proposed to raise the waters of the Lake two feet and use the surplus for irrigation and power.

Reno's opposition to the scheme beat it.

Well, Reno is in line now because it figures that irrigation in Churchill county will be a good thing for Reno.

We are glad to see Reno and the Journal waking up to the importance of this scheme which looked so unpromising to it a few years ago.

Then comes D. L. Bliss fighting the scheme in the interests of the beautiful. He is one of the men who is on hand to make a protest to the Congressional Committee, on the ground that it will spoil the beauty of the Lake.

Since when did D. L. Bliss become a student of nature and a lover of the beautiful?

It was his devastating hand that began the cutting of timber about the Lake until the grand forests which skirted the Nevada side were leveled with his axe and nothing but the skeleton forests remained and the bleached bones of the giant trees that a quarter of a century ago appealed to the poetic and sentimental side of a man's nature.

He was perfectly willing to dispoil the Lake of its beauty then, because it made him a millionaire but he don't want what beauty there is left to be spoiled now, if any one else is to make money. This late day repentance and sham sentimentalism makes us tired.

## Warren Anniversary.

Today being the anniversary of the organization of the Warren Engine Company the boys will hold a jollification in their engine house in commemoration of the event.

It has been the custom for a great many years to celebrate their anniversary by a public dance, but this year the boys have changed the program. The big time will take place tonight and the members of this worthy organization are going to celebrate in grand style. Plenty to eat and drink will be the order of the evening. Only members will participate.

## Progressing Rapidly.

Work on the artesian well for the State is progressing in fine style, the contractor expecting to be down 100 feet by this morning. Three eight hour shifts are employed and the work will not cease until complete! The usual crowd was on hand yesterday and last night to see that everything went to suit them, and the general impression is that all is O. K.

## Jesso.

A Republican Central Committee man was strolling past another Committeeman's house recently and a friend remarked that the house was being fixed up and a new coat of paint going on.

"You bet" was the reply. He packed the campaign sack."

## The Party.

A good crowd was in attendance at the Custer party last evening and a jolly good time was had by all. These parties are always a success in every way and deserve the splendid patronage they receive as the proceeds are used for a worthy cause.

## Cut His Tongue Out.

A fine stallion belonging to Peterson and Springmyer sustained an injury to his tongue which necessitated an operation. Dr. Price yesterday performed a successful operation of amputating the tongue and the animal will be alright in a few days.

## CARNIVAL FEATURES.

Twenty Four Big Circus Acts at Each Performance.

"The big feature of the carnival is the Stadium, the performance given under a large tent seating 4,000 people, where twenty-four big circus acts will be given each performance. Every one of the acts is a feature and we have not a cheap attraction in the aggregation.

"We carry no smoke eaters or hoochey koochey dancers or any repulsive freak or fake of any kind. Every attraction is strictly first class and in advertising the show we want people to know that we have a strictly up to date, first class entertainment, the best that money can secure.

"Mr. Nat Reiss is presenting the show this year to the people of Reno and Nevada and will give them something entirely new right through, something that has not been seen in this section."

## Struck by a Tornado.

Thursday afternoon a small sized cyclone struck Gold Hill, and for a time it was feared great damage would result. A whirlwind started in front of the postoffice, but in a few moments assumed a funnel shape, and a cloud of dust and debris fully 200 feet in height was blowing toward the V. & T. depot.

Agent Cahill saw the tornado coming and shut the door just as it hit the building, which rocked as though by an earthquake, and shingles were ripped off the roof like a bundle of toothpicks. The wind veered in the direction of Fred Strauss residence and the shingles on the roof were sent flying in every direction.

An old building near Tom Williams' residence was the next place in the path of the storm, and a brick chimney was lifted bodily from the roof. The tornado passed to the rear of the residences of James Cahill and Henry Tobener, and two-inch planks were lifted from a pile of lumber in the yard of the latter and whirled in the air, but luckily no one was injured.

The cyclone then passed away toward the mountain. Men working at the depot heard the roar of the wind and took to flight and found shelter in a blacksmith shop nearly opposite, barely escaping a shower of shingles which came off the depot. The unusual phenomena was witnessed by nearly everyone in Gold Hill, and a sigh of relief went up as the whirling cloud of dust, air cans, boards and other movable articles disappeared behind the mountain. It is estimated that the damage done in the few minutes will amount to about \$200.—Enterprise.

## Funeral of Rita Jones.

The funeral of little Rita Jones took place from the family residence in the northern part of town yesterday afternoon. The casket was covered with floral tributes from friends and acquaintances, and this testimony of sympathy did much to soften the grief of the parents.

The services were conducted by the Rev. J. B. Darnelle.

## Last Night of the Kintoscope.

Tonight will be the last night of the Kintoscope until further notice, so if you want to see the good pictures of the "Incendiary" and the "Kleptomaniac" you had better take advantage of the opportunity and go.

A bolt makin gsmachine running at high speed, burst at Hawthorne yesterday, injuring six persons. One of the men had an ear taken off and another his eye knocked out. The injured were taken to the S. P. Hospital at Sacramento last night.

## THE IRRIGATION COMMITTEE.

Distinguished Party Will Visit Nevada Today.

The Congressional party consisting of the committees on irrigation of the United States Senate and House of Representatives, numbering upwards of forty people will arrive in Reno Saturday morning on a special train of Pullmans running as a second section of train No. 14.

The train will stop there fifteen minutes and immediately proceed on its way to Hazen where the congressional party will view the new ditch and dam, and witness the turning of the water into the big canal.

The train arrives at Hazen, leaving on the return trip at 4:30 o'clock, giving just four hours to view the work. Arriving at Reno at 6 o'clock the party will be met by the various committees having the reception of the visitors in charge. A banquet will follow probably at the Riverside hotel.

After the repast the visitors will be toasted by prominent Reno people and a couple of hours will be spent around the banquet table. The party will leave this evening at 10:10 for the east.

At Hazen the congressional party and a number of invited guests, including prominent railroad men, will be met by the officers of the reclamation service, who will turn the waters of the Truckee river to the great irrigation canal, the first one completed under the national irrigation law.

The members of the party are: Mr. and Mrs. C. J. Blanchard of Washington, D. C., Senator Francis G. Newlands of Nevada, United States Senator Frank P. Flint of California, Senator Fred Dubois of Idaho, Representative Frank W. Mondell of Wyoming, Representative and Mrs. Allen F. Cooper of Pennsylvania, Representative and Mrs. William A. Reeder of Kansas, Representative and Mrs. Wesley L. Jones of Washington, Judge James I. Parker of the Interior Department and Mrs. Parker, C. G. Rowley of Jackson, Mich., chairman of the committee on public lands and irrigation of the National Association of Manufacturers; Elwood Mead, in charge of the irrigation investigation of the Department of Agriculture; W. J. Doran and W. H. Sanders of Los Angeles, and representatives of the press.

Dr. McCoy Chappell is a Carson visitor.

Controler Davis was a departure for Reno last evening.

Remember the band concert in the Park this evening.

Mrs. Brevier has returned from a visit to Reno. Her injured knee is improving rapidly.

T. D. Vandevort, editor of the Goldfield review, is spending a few days in Carson City.

The Queen of the Reno Carnival will be crowned by the Knights of Khorassan, June 29th.

Judge and Mrs. Fitzgerald, accompanied by Miss Fitzgerald departed last evening for Redding, California.

It is expected that Root will be here next week to begin his training for his match with Hart in Reno on the 3d of July.

Mrs. M. W. Ward and little daughter returned yesterday morning from San Diego where they have been visiting for two months.

Quite a number of people left on the train last evening to witness the opening of the big irrigation ditch at Fallon and meet the Congressional delegation.

## SUPREME COURT DECISION.

(Continued From Page Two.)

the property of the brewery" and "that we do not sell our cooperage, and our traveling salesmen are not authorized to sell it," and of other witnesses to the same effect, stands in the record uncontradicted. Shape in his deposition stated that he was not so empowered but his answer was excluded. He also stated that his charging \$101.25 for the forty five half barrels was a mistake. The amount of the bill he made up roughly and apparently without proper data for presentation to the assignee was \$369.75 but the bookkeeper of the keg department of the plaintiff testified that the balance due from Ecker was \$381.55. After payment of expenses the assignee had \$139.15 remaining and paid the creditors ten and three tenths cents on the dollar. The plaintiff was paid this pro rata on \$369.75, amounting to \$89.58 which was remitted to Milwaukee by Currier and King. Of this latter sum is apparent that about eleven dollars was from the item for forty-five half barrels at \$101.25 which had been included and that the dividend paid to plaintiff was more than double what it ought to have been and that this occurred because Shape had made out the bill for more than twice the amount shown to be due by the plaintiff's books. How much the defendant would have paid for the beer without the cooperage does not appear. If he offered to sell the casks for \$100 that may have been all he considered them worth to him at the time he bought them from the assignee. If it be considered that the amount paid by the defendant to the assignee, \$423.00, which it is alleged in the complaint to be the value of the kegs, and which defendant admits while asking for a judgment for that amount and objecting to one for their return to him, was paid for the barrels, leaving less than \$150 for the beer they contained, then that sum was distributed among all the creditors and the plaintiff received less than fifteenth of the amount in its dividend from the assignee. It does not appear that the plaintiff or its officers was informed or knew that any part of the money it received came from its cooperage, or that Shape had consented to a sale, or attempted to waive the plaintiff's right to the kegs, and accepting a part of the amount due on its claim against Ecker without such knowledge, did not stop plaintiff from claiming its property. If it had been aware of all the facts from the beginning and had waived its right as contended, it would have been a poor business transaction to donate more than fourteen fifteenths of its cooperage toward the payment of the other creditors, which would be the result if the plaintiff could not recover, for it never received anything from the defendant directly or knowingly or from Ecker for the casks. The court sustained defendant's objections to the following question in the deposition of Henry Uihlein, president of the plaintiff's company: "When did you first learn that Mr. Shape had collected a cooperage account with your beer account from Mr. Grimmon and are you now ready and willing to return him all money so collected for cooperage?"

Until the defendant introduced some evidence tending to show that the plaintiff or its properly authorized agents had sold or waived the company's right to the casks or knowingly accepted a part of the proceeds from them, it was not necessary for the plaintiff to show anything to the contrary for the burden of proving estoppel was upon the defendant. The same was true regarding the check for \$50.63 tendered by counsel for the plaintiff to the attorney for the defendant, but the evidence in this connection was ruled out. A part of the answers and letters in the depositions which we have considered in order to give a more extended explanation were not admitted or offered in evidence but this could not affect the result for they tend to prove a limitation of Shape's powers and plaintiff did not need to introduce them until after defendant had shown some authority in him to dispose of the cooperage. On behalf of the defendant it is claimed that the grounds for the exceptions taken by the plaintiff to the action of the court in overruling objections are not specified as required by the case of McGinn v. McInnis (24 Nev.) The reason for an objection should be called to the attention of the court once but need not be repeated. If objection be made to the introduction of a deed because it is not signed or acknowledged by the grantor, or to a question upon the ground that it is hearsay and the court overrules the objection the counsel simply states "We except" or "Note our exception." It is sufficient, for the only fair implication in that he excepts to the action of the court in overruling his objections on the grounds he has specified, and of which the court has already been made aware. The decision in McGinn v. McInnis does not require more, but an inference might be drawn from the syllabus in that case that the grounds of the objection must be repeated at length in the exception, which would be time, number records and have no useful purpose. The specifications regarding the insufficiency of the evidence is definite and complete, and if it were the only one it would be necessary to send the case back to the District court.

As there is no evidence to support the verdict and judgment it naturally follows that the instructions which assume that there is such evidence were improperly given. Other specifications relate to questions similar to those which we have considered or to rulings which are not likely to occur again.

The case is remanded for a new trial.

Witnessed and signed Per Curiam, Filed June 16, 1905.

W. G. Douglass, Clerk.

By \_\_\_\_\_

## Ed. J. Walsh

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